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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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JAE KYUNG YI,

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Plaintiff,

8

v.

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TIMOTHY S. AITKEN, et al.,

10

Defendants.

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Case No.[18-cv-06009-JSC](#)

**ORDER RE: PETITION FOR  
WRIT OF HABEAS CORPUS**

Re: Dkt. No. 1

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Petitioner Jae Kyung Yi (“Mr. Yi”) is a citizen of South Korea who has resided in the United States as a lawful permanent resident since 1979.<sup>1</sup> Mr. Yi’s application for United States citizenship was denied on October 23, 2001. (Dkt. No. 6-1 at ¶ 3.)<sup>2</sup> In February 2014, Mr. Yi was convicted in California state court of assault with a deadly weapon and sentenced to prison. (*Id.*) Mr. Yi was released from prison and transferred to the custody of U.S. Immigration and Customs Enforcement (“ICE”) on February 14, 2018. (*Id.*) ICE initiated removal proceedings against Mr. Yi that day, “for being removable under the Immigration and Nationality Act § 237(a)(2)(A)(iii), having been convicted of an aggravated felony.” (*Id.*) On March 20, 2018, an Immigration Judge ordered that Mr. Yi be removed to South Korea. (Dkt. No. 6-2, Ex. C at 10.) Mr. Yi waived his appeal “and the order became final.” (Dkt. Nos. 6-1 at ¶ 4; 1 at ¶ 16.) Now pending before the Court is Mr. Yi’s petition for writ of habeas corpus.<sup>3</sup> (Dkt. No. 1.)<sup>4</sup> Having carefully reviewed

<sup>1</sup> The petition lists Petitioner’s name as “Yi Jae Kyung,” however, Department of Homeland Security records and Petitioner’s own signature indicate that his name is Jae Kyung Yi. (*See* Dkt. Nos. 1 at 5; 4; 6-2 at 2-10.)

<sup>2</sup> Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

<sup>3</sup> All parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. Nos. 4 & 5.)

<sup>4</sup> The petition names former federal officials; pursuant to Federal Rule of Civil Procedure 25(d), the following current federal officials are automatically substituted as parties: David Jennings, San Francisco Field Office Director for ICE; Ronald D. Vitiello, ICE Deputy Director and Senior

1 the parties' briefing, the Court DISMISSES Mr. Yi's petition as moot because he has been  
2 removed from the United States and is no longer in ICE custody.

3 **LEGAL STANDARD**

4 Federal courts are courts of limited jurisdiction and federal jurisdiction requires a live case  
5 or controversy at every stage of litigation. U.S. Const. art. III, § 2, cl. 1; *Am. Rivers v. Nat'l*  
6 *Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997). "A federal court does not have  
7 jurisdiction 'to give opinions upon moot questions or abstract propositions, or to declare principles  
8 or rules of law which cannot affect the matter in issue in the case before it.'" *Id.* (quoting *Church*  
9 *of Scientology v. United States*, 506 U.S. 9, 12 (1992). Thus, if at any point during the litigation  
10 an event occurs such that there is no longer a live case or controversy upon which relief can be  
11 granted, the claim is moot and must be dismissed. *Am. Rivers*, 126 F.3d 1118, 1123 (9th Cir.  
12 1997).

13 **DISCUSSION**

14 On November 8, 2018, Respondents filed notice indicating that Mr. Yi "has been removed  
15 from the United States and is no longer in the custody of [ICE]." (Dkt. No. 7 at 1.) Attached to  
16 their notice Respondents submitted a "Warrant of Removal/Deportation" indicating that Mr. Yi  
17 was removed to South Korea on November 2, 2018. (Dkt. No. 8-1, Ex. 1 at 2-3.) Respondents  
18 contend that Mr. Yi's claim "is now moot" based on his removal. (Dkt. No. 7 at 1.) The Court  
19 agrees.

20 "[A] petitioner's deportation does not automatically render his claim moot." *Abdala v.*  
21 *Immigration and Naturalization Serv.*, 488 F.3d 1061, 1064 (9th Cir. 2007). However, "[f]or a  
22 habeas petition to continue to present a live controversy after the petitioner's release or  
23 deportation, . . . there must be some remaining 'collateral consequence' that may be redressed by  
24 success on the petition." *Id.* Here, Mr. Yi's petition challenges only the length of his confinement  
25 as unconstitutionally "indefinite" under *Zadvydas v. Davis*, 533 U.S. 678 (2001) because (at the  
26 time of filing) he had been detained for longer than six months following his final order of

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28 Official Performing the Duties of Director; Kirstjen Nielsen, Secretary of Homeland Security; and  
Matthew G. Whitaker, acting Attorney General of the United States. (See Dkt. No. 6 at 1 n.1.)

1 removal. (See Dkt. No. 1 at 4-5) (“Petitioner’s continued detention is unlawful and violates 8  
2 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*.”) Because Mr. Yi has been  
3 released from ICE custody, which is the only relief sought by his petition, his claim is moot  
4 because there is no “collateral consequence arising from [his] deportation that may be redressed by  
5 success on [his] petition.” *See Abdala*, 488 F.3d at 1064-65 (finding petition moot where  
6 petitioner had been removed and petition challenged only the length of previous confinement).

7 **CONCLUSION**

8 For the reasons set forth above, the Court dismisses Mr. Yi’s petition for writ of habeas  
9 corpus as moot. The Clerk is directed to close the file.

10 **IT IS SO ORDERED.**

11 Dated: November 14, 2018

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15 JACQUELINE SCOTT CORLEY  
16 United States Magistrate Judge  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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YI JAE KYUNG,  
Plaintiff,

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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

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That on November 14, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Yi Jae Kyung ID: 36771275  
425 Golden State Avenue  
Bakerfield, CA 93301

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Dated: November 14, 2018

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Susan Y. Soong  
Clerk, United States District Court

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By:   
Ada Means, Deputy Clerk to the  
Honorable JACQUELINE SCOTT CORLEY